15

Office - Supreme Court, U.
FILED
JUL 25 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951.

No. 169

M. G. MARTINEZ, FABIAN VIGIL, SALOMON LOVATO, CRUZ TRUJILLO and the BOARD OF COUNTY COMMISSIONERS, Rio Arriba County, New Mexico, Petitioners,

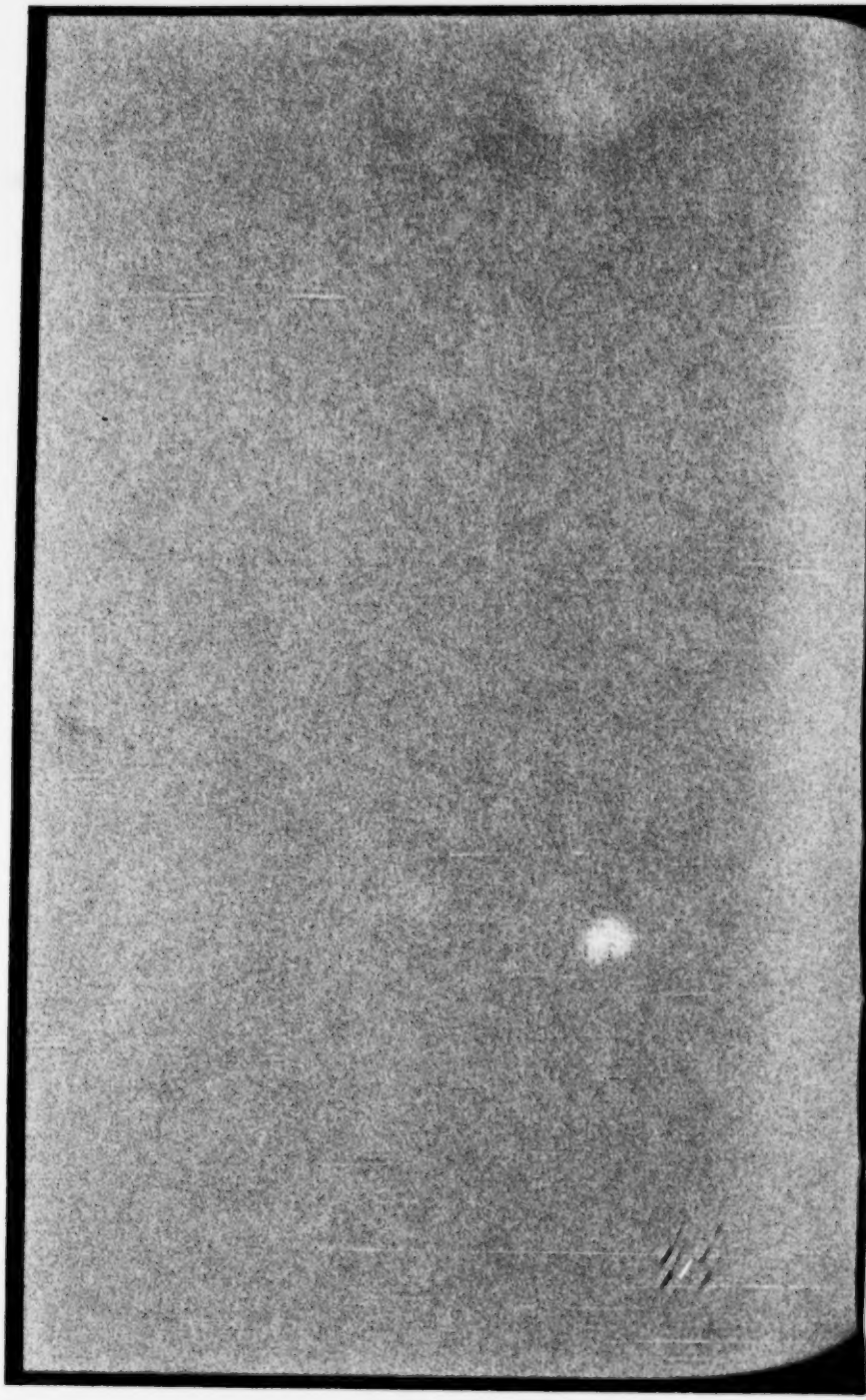
vs.

J. LUIS RIVERA, J. ARMANDO RIVERA, J. GASPAR RIVERA, RUBEN RIVERA CHAVEZ, EMILIA RIVERA MUNIZ, ROSINDA RIVERA VALDEZ, MATILDA RIVERA, ROBERT PETERSON, EARL SHAWCROFT, JOHN SHAWCROFT, WADE SHAWCROFT, W. B. HAMILTON, MALCOLM STEWART, SR., ARAMINTA K. STEWART, LUGARDA SARGENT, MERCEDES SARGENT MIDDLEMIST, DORA SARGENT QUINLAND, MARGARET SARGENT GARCIA, T. W. CROWTHER, HOWARD CROWTHER, DON CROWTHER, WM. L. BAGWELL, L. N. BAGWELL, KARL BRUESSELBACH, and KARL BRUESSELBACH, trustee of the estate of WILLIAM KINDERMAN, deceased, Respondents.

BRIEF OF RESPONDENTS ON PETITION FOR WRIT OF CERTIORARI

SETH AND MONTGOMERY,
Attorneys at Law,
111 East San Francisco St.,
Santa Fe, New Mexico.
J. O. SETH,
Santa Fe, New Mexico.

Eastwood Printing Co., 3031 Curtis Street, Denver



INDEX

PAGE

Statement of the Case 1

I. Argument 2

II. Political Question 8

III. Summary 9

Exhibit "A" 11

Sec. 9-101 to 9-103, New Mexico Statutes 1941 Anno.

TABLE OF CASES

Astiazaran vs. Santa Rita Land & Mining Co., 142 U.S. 80; 37 L. Ed. 376 ..... 6, 8, 9

Beard vs. Federy, 3 Wall. 478, 18 L. Ed. 88 7

Board of Trustees vs. Brown, 33 N.M. 398, 269 P. 51 8

Botiller vs. Dominguez, 130 U.S. 238, 32 L. Ed. 926 9

Catron vs. Laughlin, 11 N.M. 604, 72 Pac. 26 9

Flores vs. Bruesselbach, 149 Fed. (2d) 616 3

H. N. D. Land Co. vs. Suazo, 44 N.M. 547, 105 Pac. (2d) 744 3

Jones vs. St. Louis Land & Cattle Co., 232 U.S. 355, 58 L. Ed. 636 8

Meador vs. Norton, 11 Wall. 442, 20 L. Ed. 184 7

Reilly vs. Shipman, 266 Fed. 852 9

Tameling vs. U. S. Freehold & Immigration Co., 93 U.S. 649, 23 L. Ed. 998 ..... 6, 9

U. S. vs. City of Santa Fe, 165 U.S. 675, 41 L. Ed. 874 9

U. S. vs. Maxwell Land Grant Co., 122 U. S. 365, 30 L. Ed. 1211 (On rehearing, 93 U.S. 649, 23 L. Ed. 998) 3, 5, 6

INDEX (Continued)

	PAGE
U. S. vs. Murillo, 1 Wall. 709, 17 L. Ed. 626	7
U. S. vs. Sandoval, 167 U.S. 278, 42 L. Ed. 168	9
Yeast vs. Pru, 292 Fed. 598	9

STATUTES

Act of Congress, June 21, 1860 (12 Stat. 71)	2, 3, 9
New Mexico Statutes 1941 Anno., Secs. 9-101 et seq.	2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951.

No. 169

M. G. MARTINEZ, FABIAN VIGIL, SALOMON LOVATO, CRUZ TRUJILLO and the BOARD OF COUNTY COMMISSIONERS, Rio Arriba County, New Mexico, Petitioners,

vs.

J. LUIS RIVERA, J. ARMANDO RIVERA, J. GASPAR RIVERA, RUBEN RIVERA CHAVEZ, EMILIA RIVERA MUNIZ, ROSINDA RIVERA VALDEZ, MATILDA RIVERA, ROBERT PETERSON, EARL SHAWCROFT, JOHN SHAWCROFT, WADE SHAWCROFT, W. B. HAMILTON, MALCOLM STEWART, SR., ARAMINTA K. STEWART, LUGARDA SARGENT, MERCEDES SARGENT MIDDLEMIST, DORA SARGENT QUINLAND, MARGARET SARGENT GARCIA, T. W. CROWTHER, HOWARD CROWTHER, DON CROWTHER, WM. L. BAGWELL, L. N. BAGWELL, KARL BRUESSELBACH, and KARL BRUESSELBACH, trustee of the estate of WILLIAM KINDERMAN, deceased, Respondents.

BRIEF OF RESPONDENTS ON PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

The respondents feel called upon to make additional statement of the case by reason of the fact the petitioners omitted reference to the statute of the State of New Mexico, the construction and application of which gave rise to the principal issue in the case.

The respondents sought an injunction against the petitioners from proceeding with an election which was purportedly called pursuant to Sections 9-101 to 9-117, New

Mexico Statutes 1941 Annotated. This state statute provided for the creation by election of a board of trustees to operate and manage community land grants, and petitioners sought to apply it to the Tierra Amarilla Land Grant located in Rio Arriba County, New Mexico. The question for the trial court was whether or not the state statute under which the petitioners were proceeding was applicable to the Tierra Amarilla Land Grant. The petitioners contended that the statute was applicable to this particular grant and the respondents contended that it was not applicable. This question of the applicability of the New Mexico statute was determined by the trial court which found that the Tierra Amarilla Land Grant was not such a grant as was contemplated by the statute, and enjoined the petitioners from proceeding with the election. Upon appeal, the United States Court of Appeals, Tenth Circuit, affirmed the judgment of the trial court.

I.

Argument

As indicated in the Statement of the Case, the trial court found that the Tierra Amarilla Land Grant was not a grant as contemplated by Sections 9-101 to 9-117, N.M.S. 1941 Anno., said grant being a private land grant and not a community grant. The provisions of the state statute are applicable, and can be applied only to a land grant where all or some of the lands are to be owned in common by the residents of the grant and the management of such common lands by a board of trustees elected by the claimants is necessary. (See Exhibit "A" hereto.)

The trial court in its conclusion, and the United States Court of Appeals in its affirmance, followed previous decisions of the Federal and State courts as to the nature of this particular grant, and further followed the decisions of this court as to the conclusive effect of confirmation of the grant by Congress in its Act of June 21, 1860 (12 Stat. 71). This Act confirmed many large land grants in New Mexico.

In the case of *Flores vs. Bruesselbach*, 149 Fed. (2d) 616, the Circuit Court of Appeals for the Tenth Circuit passed upon the question as to whether or not the Tierra Amarilla Land Grant was a community grant or a private grant. The court found that the grant was a private grant and not a community grant. The Supreme Court of the State of New Mexico has likewise passed upon the same question in the case of *H. N. D. Land Company vs. Suazo*, 44 N.M. 547, 105 Pac. (2d) 744, and reached the same result.

The Federal Court in the case of *Flores vs. Bruesselbach*, the State Court in the case of *H. N. D. Land Company vs. Suazo*, and the Court of Appeals below in this action, all followed the decisions of this court holding that the Act of Congress in confirming land grants in New Mexico is conclusive, and neither interested parties nor the United States may go behind the act of confirmation. The particular act of confirmation which referred to the Tierra Amarilla Land Grant has been considered and construed by this court, and the Court of Appeals in the case at bar followed strictly the decisions of this court. All questions of Federal law involved in this action have heretofore been decided by this court.

The Maxwell Land Grant, which is likewise located in New Mexico, was confirmed by the same Act of Congress as was the Tierra Amarilla Land Grant (Act of June 21, 1860, 12 Stat. 71), and granted 1,714,764 acres to two claimants. After this confirmation, the United States attacked the validity of the grant and brought an action to cancel or reform the Patent to the Maxwell Land Grant. This action was finally concluded in this court in the case entitled *United States vs. Maxwell Land Grant Company*, 121 U. S. 325, 30 L. Ed. 949, and this court found that the confirmation by Congress was a matter only for legislative deliberation. This Court further stated:

> "This case of Tameling, while it cannot be said to be conclusive of the one now before us, for the reason that that was an action of ejectment founded upon a title con-

firmed by an act of Congress, in which the title could not be collaterally assailed for fraud or mistake, and the present is a suit attacking the patent and the survey upon which it issued directly by a bill in chancery to set them aside for such fraud and mistake, still the opinion announces principles which as applicable to this case and as regards the question of the extent of the grant, it would seem should govern it. The title in that case was confirmed to Tameling's predecessor in interest by the same act which confirmed the grant now in question to Beaubien and Miranda, the one being number fourteen and the other number fifteen as enumerated in the section of the statute already recited. In regard to that statute, and its effect upon the title confirmed by it, this court (p. 662) says: 'No jurisdiction over such claims in New Mexico was conferred upon the courts; but the surveyor general, in the exercise of the authority with which he was invested decides them in the first instance. The final action on each claim reserved to Congress is, of course, conclusive, and therefore not subject to review in this or any other forum. It is obviously not the duty of this court to sit in judgment upon either the recital of matters of fact by the surveyor general, or his decision declaring the validity of the grant. They are embodied in his report, which was laid before Congress for its consideration and action. * * *' Congress acted upon the claim 'as recommended for confirmation by the surveyor general.' The confirmation being absolute and unconditional, without any limitation as to quantity, we must regard it as effectual and operative for the entire tract. The plaintiff in error insists that, under the Mexican colonization laws in force when the grant was made, not more than eleven square leagues for each petitioner could be lawfully granted. As there were in the present instance but two petitioners, and the land within the boundaries in question is largely in excess of that quantity, the invalidity of the grant has

been earnestly and elaborately pressed upon our attention. This was a matter for the consideration of Congress; and we deem ourselves concluded by the action of that body. The phraseology of the confirmatory act is, in our opinion, explicit and unequivocal."

and concluded:

"The case before us is much stronger than the ordinary case of an attempt to set aside a patent, or even the judgment of a court, because it demands of us that we shall disregard or annul the deliberate action of the Congress of the United States. The Constitution declares (Article IV, Sec. 1) that 'the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United States.' At the time that Congress passed upon the grant to Beaubien and Miranda, whatever interest there was in the land claimed which was not legally or equitably their property was the property of the United States; and Congress having the power to dispose of that property, and having, as we understand it, confirmed this grant, and thereby made such disposition of it, it is not easily to be perceived how the courts of the United States can set aside this action of Congress."

A motion for rehearing was filed in the cited case, and in *United States vs. Maxwell Land Grant Company*, 122 U.S. 365, 30 L. Ed. 1211, this court denied rehearing, its opinion in part being as follows:

"* * * The first ground on which a rehearing is asked is that this court was in error in treating the grant to Beaubien and Miranda as an empresario grant, upon which alleged mistake it is asserted that the decision of the court turned. The error, however, is in the assumption in the petition that the decision of the court turned upon the point. * * * But we stated distinctly that we

did not rest our judgment upon the fact of its being an empresario grant, but upon the proposition that the Congress of the United States, having confirmed this grant as made to Beaubien and Miranda, and reported for confirmation by the Surveyor General of New Mexico to that body, without qualification or limitation as to its extent, acted in that respect within its power and that its action was conclusive upon the court."

The case of *Tameling vs. U. S. Freehold and Immigration Co.*, 93 U. S. 649, 23 L. Ed. 998, which is referred to and quoted from in the first Maxwell Land Grant decision referred to above, likewise concerned a land grant partly in New Mexico and which was confirmed by the same Act of Congress as was the Tierra Amarilla Land Grant. This Tameling case was one in ejectment, but the same issue and the issue of the confirmation were passed upon. In this cited case the proposition here involved is fully stated, and it is this case which is quoted at considerable length in subsequent opinions. This court there held that the action of Congress in confirming the grant as recommended by the Surveyor General was conclusive and not subject to judicial review. The court further found that the claims to the land grants in New Mexico were decided in the first instance by the Surveyor General, but Congress had reserved to itself the final action thereon, and when such action has been taken the courts could not set in judgment upon a recital of matters of fact by the Surveyor General or upon the decision of Congress thereon.

This court, in the case of *Astiazaran vs. Santa Rita Land & Mining Company*, 142 U.S. 80, 37 L. Ed. 376, again considered the matter, and referred to the decision in the Tameling case and the case of *United States vs. Maxwell Land Grant Company*. The court quoted from the previous opinions and again stated that the decision of Congress made upon the facts and report made by the Surveyor General, which decision is contained in the Act of Congress confirm-

ing the grants, is conclusive and such decision of Congress would not be re-examined by the courts.

United States Court of Appeals, Tenth Circuit, in the case at bar, cites the decisions of this court above referred to, together with decisions of district and circuit courts, and states that the act of confirmation by Congress is conclusive and not subject to judicial review. This conclusion is, of course, in all respects in conformance with the opinions of this court. The court below so decided that the grant had been confirmed as a private land grant, and the state statute relating to the creation of a board of trustees for community land grants was not applicable to the Tierra Amarilla Land Grant, and consequently affirmed the issuance of the injunction by the trial court.

The above cited cases of this court, and of the lower Federal courts, show that the matter has been fully considered heretofore; that the act of confirmation of the Tierra Amarilla Land Grant has itself been considered by this court in other cases; and further that there is no question of Federal law existing in the case at bar which has not already been settled by this court.

The result reached by the court below, its decision and opinion are in no way in conflict with any decisions of this court.

The petitioners in Point I of their Brief refer to the case of *Beard vs. Federy*, 3 Wall. 478, 18 L. Ed. 88; and cite in their Petition *U. S. vs. Murillo*, 1 Wall. 709, 17 L. Ed. 626, and *Meador vs. Norton*, 11 Wall. 442, 20 L. Ed. 184, as holding contrary to the court below in the case at bar. Each of these cases consider cases arising from California where land grants were handled in an entirely different manner under a different Act of Congress. This difference, which is a fundamental one, was referred to by this court in the Tameling case, supra, and the following statement is made:

"It will thus be seen that the two modes for the deter-

mination of Spanish or Mexican land claims were radically different. In California, a procedure essentially judicial in its character, is provided for securing an adjudication of them with the right of ultimate appeal by either the claimant or the United States to this court. The Surveyor-General of New Mexico is clothed with large powers, and required to decide upon the validity of each claim. Final action on the subject is reserved to Congress. Such action is, of course, conclusive and, therefore, not subject to review in this or any other forum."

The petitioners also cite *Jones vs. St. Louis Land & Cattle Co.*, 232 U.S. 355, 58 L. Ed. 636, as being contrary to the decision of the court below. However, this cited case concerned an area which was later found to be within the exterior boundaries of two different grants which had been confirmed by the same Act of Congress. This court thus had to decide which grant had the right to the area in conflict. The court decided that the one first made by the Mexican government should prevail. This matter of conflict between two grants confirmed in the same Act of Congress is quite different from the case at bar. Furthermore, there is nothing in the cited case contrary to the decision below, and this court in fact refers to the Tameling case and *Astiazaran vs. Santa Rita Land & Mining Co., supra.* Likewise *Board of Trustees vs. Brown*, 33 N. M. 398, 269 P. 51, quoted at length in petitioners' brief (p. 18) concerns the same matter of conflict between two grants and cannot be regarded as persuasive upon the issues in the case at bar.

II.

Political Question

The petition for the writ states that the questions involved are substantial because (a) they involve the question of whether the United States performed its duty to Mexican citizens and their heirs as required by the Treaty of Guada-

lupe Hidalgo, and (d) that the final outcome of this case may determine whether a claim or claims should be presented to Congress for compensation by the heirs of Mexican citizens if they were deprived by the Act of Congress dated June 21, 1860 (12 Stat. 71) of property rights guaranteed by the Treaty of Guadalupe Hidalgo and the Federal Constitution. These are political questions, and present purported rights under the Treaty of Guadalupe Hidalgo. This court has consistently held that such matters and the duty of providing the mode for securing and establishing Spanish and Mexican land titles and fulfilling the Treaty of Guadalupe Hidalgo devolved upon the political department of the Government. The courts will not pass upon such issues. *Tameling vs. U. S. Freehold and Immigration Co.*, 93 U.S. 644; 23 L. Ed. 998; *Botiller vs. Dominguez*, 130 U.S. 238; 9 Sup. Ct. 525; 32 L. Ed. 926; *Astiazaran vs. Santa Rita Land & Mining Co.*, 148 U.S. 80; 13 Sup. Ct. 457; 37 L. Ed. 376; *U. S. vs. City of Santa Fe*, 165 U.S. 675; 17 Sup. Ct. 476; 41 L. Ed. 874; *U. S. vs. Sandoval*, 167 U.S. 278; 17 Sup. Ct. 868; 42 L. Ed. 168.

This rule, of course, has also been followed by the lower courts. *Reilly vs. Shipman, et al.*, 266 F. 852; *Yeast vs. Pru*, 292 F. 598 (D.C. N.M.) (1923); *Catron vs. Laughlin*, 11 N.M. 604, 72 Pac. 26.

Thus this complaint of petitioners herein raises a political question only, and cannot be here decided.

III.

Summary

The court below in reaching its decision followed the decisions of this court on all applicable Federal matters, all questions of Federal law here involved have been decided by this court. The remaining questions the petitioners complain of are not actually issues in this case, and in any event are political matters.

Therefore, respondents respectfully submit that the petition be denied.

SETH AND MONTGOMERY,
J. O. SETH.

EXHIBIT "A"

Sections 9-101, 9-102 and 9-103 of New Mexico Statutes, 1941, Annotated.

9-101. *Management of Spanish or Mexican Grants.*—All grants of land in the state of New Mexico made by the government of Spain, or by the government of Mexico, to any community, town or pueblo, or of the class of grants mentioned in section 800 [Sec. 9-102], shall be managed, controlled and governed as herein provided. [Laws 1907, ch. 42, Sec. 1; Code 1915, Sec. 799; C. S. 1929, Sec. 29-101.]

9-102. *Application of Article.*—This article shall apply to all grants of land made by the government of Spain, or by the government of Mexico, to any community, town, colony or pueblo, or to any individual for the purpose of founding or establishing any community, town, colony or pueblo; to all grants that were prior to March 18, 1907, confirmed by the Congress of the United States, or by the court of private land claims, to any community, town, colony or pueblo, and to all grants or private land claims recommended by any surveyor general of New Mexico for confirmation by Congress to any town, colony, community or pueblo, or designated as a grant to any town, colony, community or pueblo, in any report or list of land grants prepared by such surveyor general and confirmed by Congress in accordance therewith; but shall not apply to any land grant which is now managed or controlled in any manner, other than herein provided, by virtue of any general or special act. [Laws 1907, ch. 42, Sec. 2; Code 1915, Sec. 800; C. S. 1929, Sec. 29-102.]

9-103. *Board of Trustees — Management of Grants — Powers.*—The management and control of all the grants and tracts of land to which this chapter is applicable by virtue of section 800 [Sec. 9-102] is hereby vested in a board of trustees, to be known as the "Board of Trustees of the..... Land Grant" (designating the same by the name of such

town, colony, pueblo or community), and said board shall have the following general powers:

I. To control, care for and manage the said grant and real estate, and to prescribe the terms and conditions under which the common lands thereof may be used and enjoyed, and to make all necessary and proper rules and regulations for the government thereof.

II. To sue and be sued under the title aforesaid.

III. To sell, convey, lease, or mortgage so much of the land grant or real estate under its control as aforesaid as is held in common.

IV. To prescribe the price to be paid for the use of the said common lands and to prohibit any person failing or refusing to pay such amount from using any portion of the same while he continues in default in such payments; Provided, that the amount so fixed shall be in proportion to the number and kinds of live stock pasturing upon such common lands.

V. To adopt and use an official seal.

VI. To appoint judges and clerks of election at all elections herein provided for, subsequent to the first, and to canvass the votes cast thereat. [Laws 1907, ch. 42, Sec. 3; Code 1915, Sec. 801; C. S. 1929, Sec. 29-103.]